

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #2	CCRB Case #: 201709676	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/24/2017 11:00 PM	Location of Incident: 53 Pitt Street	Precinct: 07	18 Mo. SOL 4/24/2019	EO SOL 4/24/2019	
Date/Time CV Reported Mon, 11/20/2017 2:35 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/20/2017 2:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Noel Alphonso	16434	953631	PSA 4
2. POF Tiffany Bruce	16044	944211	PSA 4
3. POM Robert Giery	24648	952781	PSA 4
4. POM Thomas Mccue	25893	948292	PSA 4
5. An officer			PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Noel Alphonso	Abuse: Police Officer Noel Alphonso stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Noel Alphonso	Abuse: Police Officer Noel Alphonso frisked § 87(2)(b)	
C.POM Noel Alphonso	Abuse: Police Officer Noel Alphonso searched the vehicle in which § 87(2)(b) was an occupant.	
D. An officer	Abuse: An officer searched the vehicle in which § 87(2)(b) was an occupant.	
E.POF Tiffany Bruce	Abuse: Police Officer Tiffany Bruce refused to provide her name and shield number to § 87(2)(b)	
F.POM Robert Giery	Abuse: Police Officer Robert Giery refused to provide his name and shield number to § 87(2)(b)	
G.POM Thomas Mccue	Abuse: Police Officer Thomas Mccue refused to provide his name and shield number to § 87(2)(b)	

### Case Summary

On November 20, 2017, § 87(2)(b) filed this complaint via the CCRB website.

On October 24, 2017, at approximately 11:00 p.m., as § 87(2)(b) was sitting inside of his parked vehicle, he was approached by Police Officer Noel Alphonso, Police Officer Tiffany Bruce, Police Officer Robert Giery, and Police Officer Thomas McCue, all from PSA 4.

Police Officer Alphonso requested documents from § 87(2)(b) and, when they were not provided, opened § 87(2)(b)'s vehicle door and took hold of his arm (**Allegation A -Abuse of Authority: Vehicle stop,** § 87(2)(g) § 87(2)(b) exited his vehicle, and Police Officer Alphonso frisked him (**Allegation B -Abuse of Authority: Frisk,** § 87(2)(g) Police Officer Alphonso and an unidentified officer allegedly searched § 87(2)(b)'s vehicle (**Allegation C -Abuse of Authority: Vehicle search,** § 87(2)(g) and **Allegation D -Abuse of Authority: Vehicle search,** § 87(2)(g) ).

§ 87(2)(b) requested Police Officer Bruce's name and shield number, who provided her name and, when § 87(2)(b) stated that he could not hear her, replied, "It's not my fault"

(**Allegation E -Abuse of Authority: Refusal to provide name/shield,** § 87(2)(g) § 87(2)(b)

§ 87(2)(b) requested the names and shield numbers of Police Officer Giery and Police Officer McCue, who did not provide the information (**Allegations F and G -Abuse of Authority: Refusal to provide name/shield number,** § 87(2)(g) As a result of the incident, § 87(2)(b)

§ 87(2)(b) was issued a summons by Police Officer Alphonso for double parking (Board Review 01).

No video footage was found in this case.

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Noel Alphonso stopped the vehicle in which § 87(2)(b) was an occupant.**

**Allegation (B) Abuse of Authority: Police Officer Noel Alphonso frisked § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer Noel Alphonso searched the vehicle in which § 87(2)(b) was an occupant.**

On December 4, 2017, § 87(2)(b) was interviewed at the CCRB. On January 8, 2018, an officer photo viewing was conducted with § 87(2)(b) (Board Review 02). On May 25, 2018, Police Officer Alphonso was interviewed at the CCRB. On June 14, 2018, Police Officer Giery, Police Officer Williamson, and Police Officer Bruce were interviewed at the CCRB. On September 12, 2018, Police Officer McCue was interviewed at the CCRB.

§ 87(2)(b) acknowledged that his vehicle was double parked, the violation for which Police Officer Alphonso stated that he stopped and ultimately issued § 87(2)(b) a summons. Police Officer Alphonso spoke with § 87(2)(b) and requested his driver license and other documentation, which he initially refused to provide, questioning the reason for being stopped. After exiting his vehicle, § 87(2)(b) saw Police Officer Alphonso and Police Officer McCue lean their bodies into it.

Police Officer Alphonso stated that he approached § 87(2)(b)'s vehicle and made multiple requests that § 87(2)(b) provide documentation to him and to exit his vehicle, which § 87(2)(b) refused to do until Police Officer Alphonso opened the front driver side door of his vehicle and took hold of his arm, when he stood from his vehicle. Police Officer Alphonso instructed § 87(2)(b) to walk to the rear of his vehicle, which he did.

At the rear of his vehicle, § 87(2)(b) had a “belligerent” demeanor in that he had refused to provide information to Police Officer Alphonso and questioned the reason for the stop and had “aggressive” body language in that he motioned with his hands while speaking. For these reasons and no others, Police Officer Alphonso frisked § 87(2)(b) from his chest to his “lower extremities” to ensure that he did not possess a weapon. Police Officer Alphonso did not see anything related to § 87(2)(b)’s clothing, vehicle interior, or vehicle vicinity that led him to believe that § 87(2)(b) may have had a weapon. Police Officer Alphonso stated, as a general matter of procedure, that in each instance of his performing a car stop, if an individual is removed from the vehicle, he “automatically” performs a frisk of that individual. Police Officer Alphonso saw posters inside § 87(2)(b)’s vehicle, walked to a nearby location, where he saw wet posters adhered to a wall, and returned to § 87(2)(b)’s vehicle. Because § 87(2)(b) had refused to exit his vehicle and the posters in his vehicle appeared to be the same as those posted nearby, Police Officer Alphonso leaned his body inside every door of § 87(2)(b)’s vehicle and looked underneath each of its seats in the “lunge-able areas” where § 87(2)(b) could have placed a weapon.

No person shall stop, stand, or park a vehicle on the roadway side of any vehicle stopped, standing, or parked at the edge or curb of a street. at the edge or curb of a street. NYS Vehicle and Traffic Law (VTL), Title 7, Article 32, Section 1202 (a) 1.a (Board Review 03). An officer may only frisk an individual if the officer reasonably believes that the person is armed. People v. Issac, 107 A.D.3d 1055 (2013) (Board Review 10).

A frisk of a vehicle’s occupants cannot solely be based on their innocuous behavior and the officer’s desire to investigate possible criminal activity but must instead be based on the officer’s reasonable belief that the individual is armed or may gain access to a weapon inside the vehicle. People v. Prado, 2 Misc. 3d 1002(A) (2004) (Board Review 04), citing to People v. Banks, 85 N.Y.2d 558 (1995) (Board Review 11) and People v. Gokey, 60 N.Y.2d 309 (1983) (Board Review 12). When a vehicle’s occupants have been removed and patted down without incident, officers may generally not search the vehicle in the absence of probable cause. Officers must have more than reasonable suspicion of a weapon. People v. Newman, 96 A.D.3d 34 (2012) (Board Review 05).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Abuse of Authority: An officer searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated that another male officer in addition to Police Officer Alphonso searched his vehicle. The physical description of this officer that § 87(2)(b) provided closely matched that of Police Officer McCue, but, during a photo viewing, § 87(2)(b) stated that the NYPD MOS photograph of Police Officer Giery appeared to be the officer who searched his vehicle. Both Police Officer McCue and Police Officer Giery denied searching § 87(2)(b)'s vehicle. § 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer Tiffany Bruce refused to provide her name and shield number to § 87(2)(b)**

**Allegation (F) Abuse of Authority: Police Officer Robert Giery refused to provide his name and shield number to § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Thomas McCue refused to provide his name and shield number to § 87(2)(b)**

§ 87(2)(b) stated that he requested Police Officer Alphonso's name and shield number and that Police Officer Alphonso allegedly informed him that his "information" would be on the summons. § 87(2)(b) requested the remaining officers' names and shield numbers from Police Officer Alphonso and was told to request the information from the officers directly. § 87(2)(b) requested the names and shield numbers of Police Officer Bruce, Police Officer Giery, and Police Officer McCue, who all stood approximately three to four feet from him and faced him. Police Officer Bruce provided her name and, when § 87(2)(b) stated that he could not hear her, she allegedly said, "It's not my fault if you can't hear it." Neither Police Officer Giery nor Police Officer McCue responded to the request.

Police Officer Alphonso stated that he verbally provided his name and shield number to § 87(2)(b) and informed him that his identifying information was located on his summons. He further stated that Police Officer Bruce provided her name. Police Officer Alphonso did not recall Police Officer Bruce making a statement to § 87(2)(b) about his not hearing her and did not recall § 87(2)(b) requesting the names and shield numbers of any other officers.

Police Officer Bruce stated that § 87(2)(b) stood approximately two feet from her and requested her "badge." In response, she raised the volume of her voice and stated her name and shield number. § 87(2)(b) yelled something, the content of which Police Officer Bruce did not recall, in a "hostile" manner. Police Officer Bruce did not recall whether § 87(2)(b) requested the names and shield numbers of other officers present.

Police Officer Giery stated that § 87(2)(b) had a "hostile" demeanor and, when asked in what manner it was so, he stated, "He was just saying, 'I don't have to give you anything.' My name. My shield." Police Officer Giery later said that he did not recall whether § 87(2)(b) requested the name and shield number of any officer present, further adding that his shield is always visible and that he provides this information to civilians when requested.



- As in 201311395, in which an allegation of refusal to provide name and shield number was substantiated, this case includes an allegation of refusal to provide name/shield number.
- Police Officer Giery has been a member-of-service for six years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. Police § 87(2)(g) [REDACTED]
- Police Officer Bruce has been a member-of-service for 11 years and has been a subject in three CCRB complaints and five allegations, none of which were substantiated. As in 200816486, this case includes an allegation of refusal to provide name/shield number.

### **Mediation, Civil and Criminal Histories**

- On January 10, 2018, this case was sent to mediation, and on May 7, 2018, the case was returned to investigation as § 87(2)(b) [REDACTED] no longer wished to participate in mediation.
- As of October 11, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 08).
- § 87(2)(c), § 87(2)(b) [REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date